86-1139

Supreme Court, U.S.
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JAN 29 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1986

ROBERT J. NEVILLE,

Petitioner,

- against -

FRANK A. FINNERTY, JR., Chief Counsel,
KENNETH J. LUCEY, Chairman, and the
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT.

Respondents.

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SUPPLEMENT TO APPENDIX
(PETITION FOR WRIT OF CERTIORARI)

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January 9, 1987

## SUPPLEMENT TO APPENDIX

This is a continuation of the appendix to the petition for Writ of Certiorari. Before the supplementary material is appended, two omissions in the petition will be noted. The following should have appeared as the first paragraph in the "Statement of the Case" on page 2:

> Petitioner's First Amendment claims arose upon the respondents' refusal to reveal whether a certain formal disciplinary proceeding is pending.

This fact, which deserves some emphasis, might not otherwise be clear to the reader until page 11. The citations in this matter have only recently been obtained and are as follows: Matter of Neville v. Grievance Committee, 67 NY2d 602, 758, 918 (1986); Matter of Neville v. Finnerty, et al., 68 NY2d 790, 911 (1986). The decisions of the lower courts were apparently not reported.

The petition for Writ of Certiorari might be found lacking in that it does not demonstrate the substantial nature of petitioner's First Amendment claims. While it appears to petitioner that a refusal to reveal whether a judicial proceeding is pending is a violation of First Amendment rights regardless of whether a proceeding is in fact pending, silence when no proceeding is or should be pending is obviously the less flagrant violation of the two. Without a requirement for some showing that the silence might be pernicious, a petitioner in a Freedom of Information Law ("FOIL") proceeding could append to his information request a demand for information about the pendency of a proceeding and thereby elevate his FOIL proceeding to a federal case on the strength of a demand which may be gratuitous. Not wishing to appear to

fall into that category, petitioner sees the need to show that the respondents' silence in this case is pernicious.

Demonstrating that a formal proceeding to discipline Walter O'Hearn should be pending is one way to accomplish this. A simple reference to the suppression of information by the Grievance Committee is no substitute for a description of what was suppressed.

A failure by the Grievance Committee to bring additional formal charges against O'Hearn would in petitioner's view constitute a perpetuation of its fraud on the public, and would seem to entail some risk. New charges may well have been filed in the case.

Petitioner provided the Grievance Committee with 250 pages of information concerning this matter in April 1985. The "List of Offenses" (adapted from a "Table of Offenses") which follows

is a list of allegations of wrongdoing* by Walter O'Hearn - some proved and some not - in 30 categories. Between 75 and 122 individual acts of wrongdoing have been identified. The Grievance Committee charges included less than one half of the crimes in one category (no. 29) and even those were not accurately described, their seriousness being minimized.

Walter O'Hearn was the president of his company (McGrath Services Corporation, the parent company), and was in a position to prevent the commission of crimes by company employees.

It is not intended that this List of Offenses provide the detail necessary for a full understanding of the allegations.

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* "Admitted," following an allegation, means only that the facts were conceded to be true; wrongdoing was not admitted. O'Hearn maintains that he has never done anything unethical. Items preceded by an asterisk (*) were brought to the attention of the Grievance Committee by petitioner in a letter dated December 9, 1981.

LIST OF OFFENSES

*1. Allowing commercial bribery by William Montella, General Manager of Quin Marine Services, Inc., a McGrath company (admitted); allowing overbilling by Quin. Montella apparently committed hundreds of felonies and stole millions of dollars from McGrath corporate customers, probably splitting it with O'Hearn.

*2. Authorizing Montella to accept illegal kickbacks from suppliers. (Admitted)

*3. Allowing Montella to make illegal payments to union officials. (Admitted)

*4. Advising Montella to steal from their own company in lieu of a raise. (Proved by the testimony of Montella.)

5. As chairman of McGrath Services Corporation, failing to report Montella to McGrath stockholders. (Admitted)

6. Failing to report Montella to the District Attorney or the United States Attorney. (Admitted)

7. Failing to report Montella to the Waterfront Commission; testifying before the Commission about Montella's honesty. (Admitted)

8. Allowing bribery by Robert J. Nicol

(the Nicol-Braunstein payments). (Admitted)

9. Allowing bribery by Heiman G. Gross (the Gross-LaChance payments). (Admitted)

*10. Defrauding Lucille Kritikos, an elderly woman.

11. Soliciting information protected by the attorney-client privilege.

12. Conducting a legal proceeding based wholly on deceit: the Appellate Division appeal of the Waterfront Commission's denial of Montella's license (before it learned of his criminal activities).

*13. Conspiring with Montella to split an illegal commission.

14. Re meetings with Anthony Pimpinella and John Marano.

15. Making a $10,000 payment to New Jersey ILA official Willie Murphy.

16. Re theft of Waterfront Commission assessments by Montella.

*17. Mail and wire fraud.

18. Personal income tax fraud.

*19. Theft of services in Southampton.

*20. While acting in a fiduciary capacity, fraud in the estate of John W.

McGrath, at a cost to trust beneficiaries of two million dollars; perjury.

*21. With law clients Anne and Raymond J. O'Brien and while acting in a professional capacity, looting the estate of Eileen F. McGrath; perpetrating a fraud on the Surrogate's Court.

22. Possible concealment of subpoenaed evidence.

23. Failing to make restitution to the numerous steamship companies defrauded by McGrath; refusing demands for restitution.

24. Perjury, 1979-1982.

25. Four miscellaneous items, including possible approval of or acquiescence in the arrangements made by a McGrath director to kill Douglas LaChance and another union official; allowing Mob-connected elements and thugs to operate at McGrath.

*26. Making false sworn statements to the Waterfront Commission. (Admitted)

*27. Corporate income tax fraud. (Admitted)

28. Raising cash in an illegal manner. (Admitted)

*29. Making $210,000 in illegal payments

to Anthony M. Scotto of the International Longshoremen's Association. (Admitted)

*30. Making $40,000 in illegal payments to Douglas LaChance, president of the Newspaper and Mail Deliverers Union, on behalf of Metropolitan News Company, a McGrath subsidiary. (Admitted)*

Petitioner has not substantiated all of the above allegations. Some, such as those numbered 10, 13, 15 and 18, appear in public records with little or no supporting evidence. Even if most of the allegations were eliminated, however, a proven record of egregious wrongdoing would remain.

With the complicity of the Grievance Committee, sham mitigating factors (which had been rejected by the administrative judge at the Waterfront Commission hearing) were advanced by the respondent at the disciplinary proceeding. In fact,

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* See the footnote on page A-28.

seven of the ten aggravating factors recognized in the ABA Standards for Imposing Lawyer Sanctions (1986) were present.

Cases relating to matters referred to in the allegations, in addition to those cited on page A-24, are:

Matter of Quin Marine Services, Inc. v. Waterfront Commission of New York Harbor, 64 AD2d 554 (1st Dept, 1978);

United States v. Clemente et al., 79 Cr 142, US Dist Ct, SDNY, 1979; 640 F2d 1069 (2d Cir, 1981), cert. denied, 454 US 820 (1981);

United States v. McGrath Services Corporation;

United States v. Montella (1978);

United States v. Quin Marine Services, Inc.; and

United States v. David Rosen; all US Dist Ct, SDNY, 1979, except as noted.

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[Supplement to Appendix, pages A-25 to A-33; January 9, 1987]